

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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BLAKE BEST individually)

Plaintiff,)

vs.)

AT&T Inc. et al.,)

Defendants .)

Case No. 1:12 CV564
Honorable Senior Judge
Sandra S. Beckwith

Honorable Magistrate
Karen L. Litkovitz

JURY DEMAND

FOURTH AMENDED
COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF
JURY DEMAND

FOURTH AMENDED COMPLAINT

Pro Se/Plaintiff hereinafter Plaintiff (as defined below) submit this Fourth Amended Complaint pursuant to the Honorable Courts September 16, 2014 Order, AT&T Inc. and AT&T Mobility LLC collectively ("AT&T"). however plaintiff's pending Objection to the Report & Recommendations (Doc. No 204), awaits this Honorable Courts resolution relative to AT&T Inc's. motion to dismiss, nevertheless as Ordered, Plaintiff have adjusted it's pleadings in this Fourth Amended Complaint to show AT&T Mobility LLC's liability as instructed (Doc. No. 203), as to:

1. Counts I, V: Copyright Infringement Under 17 U.S.C. §§ 101,106, 501 and Ohio Common Law Copyright Infringement.

"Order specifying how AT&T Mobility was involved in the unauthorized copying of this copyrighted materials and any other conduct which allegedly infringed on plaintiff's copyright."

2. Counts VI: Unfair Competition under Lanham Act

"Order specifying under which prong his Lanham Act claim arises and alleging the specific conduct or statements by AT&T Mobility that form the basis of this claim."

3. Counts VII and VIII: Unfair Competition under Ohio Law Deceptive and Unfair Trade Practices under Ohio Rev. Code § 4165.02

"Order which includes factual allegations of the specific conduct that AT&T Mobility engaged in that forms the basis of his common law unfair

1 competition and statutory ODTPA claims and, further, which indentifies the
2 specific sections of the ODTPA under which his claim arises.”

3 4. Count IX: Unjust Enrichment

5 “Order that comports with the pleading requirements for stating a claim
6 for unjust enrichment under Ohio law consistent with this Order.”

7 1. This is a civil action seeking damages and injunctive relief for
8 Copyright Infringement 1976, 17 U.S.C. §§101,106, 501, Inducement of
9 Copyright infringement 17 U.S.C. §106, Contributory Copyright
10 Infringement 17 U.S.C. §106, Vicarious Copyright Infringement 17 U.S.C.
11 §106, Common Law Copyright Infringement, Federal Unfair Competition
12 Under Lanham Act 15.U.S.C§ 125, Unfair Competition Under Ohio §
13 4165.02, Deceptive and Unfair Trade Practices Under Ohio Law Ohio Rev.
14 Code § 4165.02(A) and Unjust Enrichment.

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17 **I. INTRODUCTION**

18 Federal Rule of Civil Procedure 8(a) requires a complaint to contain
19 a short and plain statement of the claim showing that the pleader is entitled
20 to relief so as to give the defendant fair notice of the claim and the grounds
21 upon which it rests. The Supreme Court has interpreted this rule to require
22 factual allegations sufficient to demonstrate that a claim is plausible on its
23 face. Courts must construe the complaint in the light most favorable to the
24 Plaintiff, accept all factual allegations as true, and determine whether the
25 complaint contains “enough facts to state a claim to relief that is plausible on
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1 its face.” Twombly, 550 U.S. at 555. The Plaintiff’s obligation to provide the
2 grounds for relief “requires more than labels and conclusions, and a formulaic
3 recitation of the elements of a cause of action will not do.” Id. Although a
4 complaint need not contain detailed factual allegations, its “factual allegations
5 must be enough to raise right to relief above the speculative level on the
6 assumption that all the allegations in the Complaint are true.” Id. The Court is
7 “not bound to accept as true a legal conclusion couched as a factual
8 allegation.” Papasan v. Allain, 478 U.S. 265, 286 (1986).

11
12 2. Plaintiff created and sold ringtone content, designed to be
13 transmitted over wireless carrier’s network to and from mobile devices.
14 Plaintiff was seeking to become the first African American Aggregator to
15 transmit ringtones through major wireless carriers through the assistance
16 (“AT&T”) and Civil Rights Activist Joseph Beasley and Southern Regional
17 Direction Rainbow Push Coalition. Plaintiff is author of the United States
18 copyright through its sound recordings. Defendants directly through its
19 network along with its aggregators copied, reproduced and or distributed
20 without authorization Plaintiff Slangtones mark as its aggregators
21 Funmobile, Mobilefunster. defendant had access to plaintiff’s work, and (2)
22 the defendant’s work has probative similarity. *See, e.g., Gates Rubber Co.*
23 *v. Bando Chem. Indus.*, 9 F.3d 823, 832 (10th Cir. 1993); *Computer Assoc.*
24 *Int’l, Inc. v. Altai, Inc.*, 9822d 693, 701 (2d Cir. 1992) (requiring “substantial
25 similarity”).
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3. As such plaintiff's sound recordings and its Slangtones mark and copyrighted sound recordings, are being infringed by a recently discovered wireless carrier Credo Mobile who were recently served with a Cease and Desist letter. In their response they "claimed the Blake Best Slangtones content is merely hosted on their third part affiliate iLoop Mobile, Inc. website which was active only in 2008, and the links shown below are not functional. Nevertheless they have requested that iLoop Mobile, Inc. remove the content." However all of the content on their website which appears to be themed after Plaintiff's www.slangtones.com remains, and still bares the Slangtones content. Their website is functional to preview the Slangtones content, which is similar to Plaintiff's content after previewing and titled the same "Lady U Home" and "Mommy Pickup" which has been copied, and is linked to the Credo Mobile website. "Lady U Home" and "Mommy Pickup" were also featured on ("AT&T"'s) website. see Exhibit Credo Mobile: Participating mobile operators:

"Currently T-Mobile, AT&T, and Sprint PCS (not available on all storefronts) support ringtones and wallpapers. AT&T and Sprint also support Java games. We will announce new participating as they join."

<http://dev.credoweb.mblade.iloopmobile.com/faq.ftl#Q10>

link to plaintiff ringtones See

http://dev.credoweb.mblade.iloopmobile.com/preview_ringtone?price_id=63643

http://dev.credoweb.mblade.iloopmobile.com/preview_ringtone?price_id=63639

Although Credo Mobile counsel denies its involvement in any alleged wrongdoing, this only exemplifies yet another example of the practices of plaintiffs' content being copied and offered for sale without authorization through the ("AT&T") / AT&T Mobility network.

1 4.. Plaintiff commenced this action on July 25, 2012 to seek
2 damages for unlawful copyright infringement and other actions. Upon
3 review of the informal discovery and evidence. Plaintiff added AT&T Inc.
4 and AT&T Mobility LLC, to its third amended Complaint after default
5 judgment was enter against its aggregators Funmobile Ltd. /Mobilefunster
6 Inc. and Mobile Streams Inc. Mobile Streams a direct aggregator of
7 AT&T Inc. and AT&T Mobility LLC, who submitted plaintiff's ringtones to
8 Funmobile Ltd. Mobilefunster Inc. and other carriers. Plaintiff also
9 submitted his sound recordings to AT&T Inc. and AT&T Mobility LLC.

10
11 5. Plaintiff is informed and upon such information alleges
12 AT&T Inc. and AT&T Mobility "aggregators" were copying and selling
13 Plaintiffs copyrighted sound recordings through their network as such
14 AT&T Inc. and AT&T Mobility directly had access to plaintiff's work, the
15 work has probative similarity. *See, e.g., Gates Rubber Co. v. Bando Chem.*
16 *Indus.*, 9 F.3d 823, 832 (10th Cir. 1993), subjecting AT&T Inc. and AT&T
17 Mobility LLC, to direct infringement. In *Playboy Enterprises, Inc. v. George*
18 *Frena, d/b/a/ Techs Warehouse BBS Systems and Consulting, and Mark*
19 *Dyess*, 839 F. Supp.1552 (M.D. Fla. 1993), the court granted summary
20 judgment for direct copyright infringement against a bulletin board service
21 ("BBS") which allegedly did not have any prior knowledge that its users
22 uploaded and downloaded files to its server containing Playboy
23 Enterprises, Inc.'s pictures without plaintiff's consent or other justification.
24 Defendant BBS allegedly removed all infringing files when it was notified
25 and subsequently monitored the server, but the court held lack of
26 knowledge was not a defense.

1 6. Plaintiff is informed and upon such information alleges
2 according to the fact, Plaintiff has uncovered information suggesting that
3 AT&T Inc. and AT&T Mobility LLC, retained a direct profits from the
4 infringing acts while declining to exercise a right to stop or limit it.
5 Furthermore, AT&T Inc. and AT&T Mobility LLC had the capacity to
6 supervise the infringing activity. Plaintiff corresponded to (“AT&T”) that
7 Plaintiffs’ ringtones were being infringed by its third party “aggregators.”
8 Whereas, Plaintiff suggested ways AT&T Inc. and AT&T Mobility LLC
9 could implement an effective system at minimum cost to prevent third party
10 “aggregators” from infringing content through their network.

11
12 7. Plaintiff is informed and upon such information alleges
13 according to the fact an, example of the likely network: Customer A visits a
14 operated by mobile content provider that sells ringtones for \$1 to \$3 each.
15 Customer A enters his or her wireless telephone into a field on the website,
16 and the desired ringtone is sent through a network to his or her wireless
17 device. Mobile content provider then sends Customer A’s telephone
18 number and the responding charge information to a billing aggregator (a
19 middleman of sorts who has relationships with major wireless
20 carriers such as (AT&T, Sprint and T-Mobile). The aggregator, in
21 turn, instructs Customer A’s wireless carrier to place the charge
22 on Customer A’s cell phone.

23
24 8. Plaintiff, was engaged in ringtones and technology, and
25 based on Defendants conduct have not continued the practice of producing
26 or promoting any ringtones. Furthermore Plaintiff sound recordings were
27 removed from AT&T Inc. and AT&T Mobility’s website and network
28 network at Plaintiffs request on or about Wednesday, October 24, 2012.

1 9. Plaintiff is informed and upon such information alleges
2 according to the fact, and now evidence reveal AT&T Inc. and AT&T
3 Mobility LLC share in the liability, while one aggregator was authorized to
4 sell Plaintiffs ringtones through their network to (“AT&T”) subscribers,
5 another aggregator Mobile Streams through Funmobile/Mobilefunster were
6 selling Plaintiffs’ ringtones AT&T Inc. and AT&T Mobility LLC
7 were received a direct profit. Upon recently discovering AT&T Inc. and
8 AT&T Mobility LLC “aggregators” were infringing Plaintiff’s ringtones
9 through their network from profits, it became apparent why (“AT&T”) had a
10 different set of Plaintiffs’ authorized ringtones on its network then the
11 “aggregators” had on their own site which was unauthorized. It also
12 became clear to Plaintiff why AT&T Inc. and AT&T Mobility LLC provided
13 Plaintiff with a short code and placed its ringtones where it was hard for
14 subscribers to find, because their “aggregators” were unlawfully selling
15 Plaintiff’s ringtones allowing AT&T Inc. and AT&T Mobility LLC to gain a
16 profit.

17
18 10. Plaintiff is informed and upon such information alleges
19 according to the fact, Plaintiffs’ initial catalogue of ringtones showed
20 strong sales in AT&T’s “What’s Hot” then they were removed and a second
21 set of Plaintiff’s catalogue were uploaded to the AT&T site which were hard
22 to locate by their subscribers. Plaintiff believes, this was a tactic to allow
23 the “aggregators” to sell Plaintiffs ringtones through AT&T’s network,
24 where there would be no confusion of sales from Plaintiff’s ringtones by
25 their “aggregators”

26
27 11. In 2008, while Plaintiffs’ authorized copyrighted sound
28 recordings, were featured in AT&T’s “What’s Hot”, it demonstrated

1 popularity with steady sales, which were described by AT&T's Senior VP
2 as good "seeing that yours ringtones are not from a known celebrity."

3 12. Plaintiff is informed and upon such information alleges
4 according to the fact, Plaintiff's ringtones sound recording were popular
5 after having survived, AT&T's test market, were Plaintiff was notified
6 through email by ("AT&T's") Attorney Timothy Johnson, that Plaintiff's
7 ringtones may be removed, if the outcome of the study is not successful.
8 Upon email notification Attorney Johnson notified Plaintiff that the
9 marketing department will allow Plaintiff's ringtones to remain. Further
10 evidence proves ("AT&T") subscribers, customers and/or users purchases
11 showed of steady sales during this period.
12

13 13. Plaintiff is informed and upon such information alleges
14 according to the fact, due to the infringement and practices
15 of Defendants and their "aggregators", Plaintiff would have
16 enjoyed tremendous success with his copyrighted sound recordings.
17 It would seem if Plaintiff's copyrighted sound recordings, were not
18 popular and had very minimum sales, then why would the
19 ("AT&T") "aggregators" continue to feature Plaintiff's ringtones for
20 sales, after multiple request in 2009 followed with a cease and
21 desist letters and repeated request in 2012 for them to be
22 removed preventing the actions set forth in this complaint?
23

24 14. ("AT&T") "aggregators" also delivered Plaintiffs ringtones
25 to Canada wireless carriers through interactive websites and through
26 the network of AT&T. Plaintiff have sustained, and continue to
27 sustain, substantial financial losses and irreparable injury, namely
28

1 future copyright infringement and violation of its trade name
2 Slangtones, it is likely through these actions plaintiff cannot become
3 an aggregator, generally the content of the alleged
4 misrepresentations giving rise to Plaintiff's Lanham act claim.

5 15. Plaintiff is informed and upon such information alleges
6 according to the fact, Plaintiffs' Copyrighted sound recordings that
7 can be used as ringtones on customer's mobile phones, has secured these
8 rights with the United States Copyright Office. ("AT&T") "aggregators"
9 have for years distributed Plaintiff's copyrighted sound recordings.
10 Plaintiff's "Mark" is Slangtones which serves to indentify Plaintiff in the
11 marketplace is the source of the works which are unlawfully
12 made available for sale to millions of subscribers.

13 14 **II. NATURE OF DISPUTE**

15
16 16. Plaintiff is informed and upon such information alleges
17 according to the fact, ("AT&T") have profited from Plaintiffs' copyrighted
18 works, disregarding knowledge that their "aggregators" were
19 infringing on Plaintiff copyright and that ("AT&T") share in the liability,
20 had knowledge or participated in the acts as reflecting matters since the
21 filing of the original complaint. A growing trend as many artist
22 and musicians such as Plaintiff who currently lack funding to
23 retain counsel, and in many cases, many persons or companies
24 who infringe upon works of arts, never get punished because the artist
25 or musicians lacked financial resources to retain counsel in matters
26 related to copyright infringement.

1 17. Plaintiff is informed and upon such information alleges
2 according to the fact, ("AT&T") be it collectively, or individually have
3 some active part to the allegations mentioned herein have engaged in a
4 deliberate effort to copyright infringe and committed other acts
5 and violations as outlined herein. Defendants "aggregators",
6 in the pre-sale of tens of millions of ringtones downloads through
7 its affiliates grossly underpaying royalties to Plaintiff.
8 This is a civil action against Defendants.

9
10 18. Plaintiff is informed and upon such information alleges
11 according to the fact, ("AT&T") introduced Plaintiff to Mobile Streams
12 so he might have a broader market to his copyrighted sound
13 recordings. Now ("AT&T") share part in the liability of the dispute,
14 because they were made aware their "aggregators" were profiting
15 from Plaintiffs' ringtones, including its sells through Bell Mobility
16 HSPA network known as Bell Canada, and they did nothing
17 to stop the infringement upon which they received some financial benefit.

18
19 19. Plaintiff is informed and upon such information
20 alleges according to the fact, Defendants ("AT&T") have willfully infringed
21 on Plaintiff copyright when they had knowledge of the infringing acts by
22 assisting its "aggregators" in selling Plaintiffs' ringtones without
23 authorization and consent, and their "aggregators", had knowledge of the
24 cease and desist letters which were served on or about August 9, 2009
25 by Honigman Miller Schwartz and Cohn LLP, and Defendants thereby
26 unlawfully profited from the unauthorized use of Plaintiffs sole and
27 most important assets its ringtones, as such ("AT&T") indirectly had
28 access to plaintiff's work, and (2) the ("AT&T") work has probative

1 similarity. *See, e.g., Gates Rubber Co. v. Bando Chem. Indus.*, 9 F.3d 823,
2 832 (10th Cir. 1993);

3
4 20. Plaintiff is informed and upon such information
5 alleges according to the fact, indeed, Defendants(s) have profited from
6 the sale of Plaintiffs' most highly regarded and expressly restricted
7 musical sound recordings. As a result Defendant aggregator
8 Mobile Streams obstructive conduct regarding Plaintiffs' audit rights
9 while their agreement were in full effect, and now that any agreement
10 by ("AT&T") aggregator Mobile Streams have been cancelled.
11 Plaintiff has a right to know the royalties derived from the sale of
12 its ringtones by Defendants, and also as the result of their actions not
13 to stop their "aggregators" from infringing after knowing there
14 "aggregators" received cease and desist letters for the authorized sales
15 of its valuable copyrights, Plaintiff has been harmed,
16 pursuant to 17 U.S.C § 504(b) and (c).

17 21. Plaintiff is informed and upon such information
18 alleges according to the fact , October 4th, 2012 Plaintiff made
19 another less formal request by electronic means through email to
20 ask ("AT&T") "aggregators" to remove Plaintiff's content.
21 October 5th, 2012, Plaintiff received a response email from
22 Funmobile's Karen Oei, Senior Vice President of Operations of
23 Funmobile Ltd, ("Paraphrase") who indicated that
24 Mobile Streams provided the content to her company. She noted
25 the content would be removed immediately. Karen Oei forwarded
26 emails to Mobile Streams and Funmobile's Christian Kwok-Leun
27 Yau Heilesen. Here Funmobile's Karen Oei, has clearly
28

1 established "access" to Plaintiff's copyrighted sound recordings
 2 which were at all times substantially similarity and were copied
 3 and sold to subscribers, customers and/or users through
 4 Fumobile's/Mobilefunster's highly interactive websites to sell
 5 Plaintiff's sound recording to millions of AT&T mobile devices. as such
 6 ("AT&T") indirectly had access to plaintiff's work, and (2) the ("AT&T")
 7 work has probative similarity. *See, e.g., Gates Rubber Co. v. Bando*
 8 *Chem. Indus.*, 9 F.3d 823, 832 (10th Cir. 1993);

10 III. PARTIES

11 22. Plaintiff/Pro Se Blake Best hereinafter ("Plaintiff") bring
 12 this action against: AT&T, Inc., a Delaware Corporation and AT&T
 13 Mobility, LLC, a Limited Liability Company is a wholly-owned subsidiary of
 14 AT&T, Inc. collectively hereinafter ("AT&T") and John Does 3-50

15
 16 A. Plaintiff is a resident Of Ohio whom address is
 17 5392 Northbend Road Cincinnati, Ohio 45247;

18
 19 C. . Plaintiff is informed and upon such information
 20 alleges according to the fact, that Defendant s AT&T, Inc. who is a
 21 Delaware corporation hereinafter ("AT&T") with its principle place of
 22 business at 208 Akard Street, Dallas Texas 75202 and regularly does
 23 business throughout this judicial district. AT&T's registered agent
 24 for service of process in Delaware The Corporation Trust Company
 25 1209 Orange Street Wilmington, New Castle DE 19801.

26 D. Plaintiff is informed and upon such information
 27 alleges according to the fact. Defendant AT&T Mobility LLC, formerly
 28

1 named Cingular Wireless, LLC, is a Delaware Limited Liability
 2 company with its principal place of business at 1025 Lenox Park
 3 Blvd, NE, Atlanta Georgia 30319 and does business throughout
 4 this judicial district. AT&T's registered agent for service of process
 5 in Delaware is The Corporation Trust Company, 1209 Orange
 6 Street, Wilmington New Castle DE 19801. AT&T Mobility, LLC is
 7 a wholly-owned subsidiary of AT&T, Inc. hereinafter ("AT&T").

8 **IV. SUMMARY OF CLAIMS**

9
 10 23. Plaintiff is informed and upon such information alleges
 11 according to the fact, ("AT&T") are liable for the infringement acts through
 12 Copyright Infringement 1976, 17 U.S.C. §§101,106, 501, Inducement of
 13 Copyright Infringement 17 U.S.C. §106, Contributory Copyright
 14 Infringement 17 U.S.C. §106, Vicarious Copyright Infringement 17 U.S.C.
 15 §106), Common Law Copyright Infringement, Federal Unfair Competition
 16 Under Lanham Act 15.U.S.C§ 125, Unfair Competition Under Ohio Law §
 17 4165.02, Unfair Trade Practices Under Ohio Law Ohio Rev. Code §
 18 4165.02, Unjust Enrichment.

19 20 **V. JURISDICTION VENUE AND PARTIES**

21
 22 24. Plaintiff is informed and upon such information
 23 alleges according to the fact , This is a civil action seeking damages
 24 and injunctive relief for Copyright infringement under the Copyright Act,
 25 17 U.S.C § 101 et seq. The Court has personal jurisdiction over
 26 ("AT&T") because they do systematic and continuous business in
 27 Ohio, and has performed acts directed at and causing harm in
 28 Ohio which gives rise to this Complaint. Venue is proper in this

1 District pursuant to 28 U.S.C § 139(b), (c) and 28 U.S.C § 1400(a).
2 This Court has subject matter jurisdiction over Plaintiffs' Copyright
3 Act claims under 28 U.S.C. §§ 1331, 1332, and
4 2201. This Court has personal jurisdiction over ("AT&T") under the
5 test established in *Calder v. Jones*, 465 US 783 (1984), applying
6 Colo. Rev. Stat. § 13-1-124. Venue is proper in this District under
7 28 U.S.C. § 1391 (b). This Court has jurisdiction over the federal
8 claims in this action under the Trademark laws of the United
9 States, Lanham Act Sections 32, 39, 43(a), and 43 (c)(I),
10 15 U.S.C. §§ 1114, 1121 and 1125(a)(c)(1), the Copyright Act,
11 17 U.S.C. § 101 et seq and the Judicial Code of the United States, 28
12 U.S.C. §§ 1331, 1338(a) and (b). This Court has supplemental jurisdiction
13 over any common law and state statutory claims under 28 U.S.C. § 1367.
14 ("AT&T") by virtue of law outlined above have contact with the state
15 of Ohio through interactive websites geared to Ohio residents.

16 25. Plaintiff is informed and upon such information
17 alleges according to the fact, further, at all times relevant herein through
18 its interactive website ("AT&T") have targeted business efforts into
19 the State of Ohio, subsequently Plaintiff had a prior agreement
20 entered into with a ("AT&T") aggregator Mobile Streams whereby
21 Plaintiff is resident and citizen of the state of Ohio, thus further making
22 this district the proper venue. ("AT&T") highly interactive
23 e-commerce website operates to sell goods and services into the state
24 of Ohio, is directed at Ohio residents, and constitutes
25 a substantial connection with the state of Ohio. Therefore, ("AT&T")
26 has purposely availed itself of the privilege of conducting activities in
27 Ohio. Furthermore, the unauthorized copying and selling of Plaintiff's
28

1 copyrighted sound recordings arises directly out of the activities of
2 its “aggregators” through its network and/or receiving profits from
3 highly interactive e-commerce websites allow (“AT&T”) jurisdiction to
4 answer to the complaint in this district.

5 26. Plaintiff is informed and upon such information
6 alleges according to the fact, Plaintiffs’ claims arise out of Defendants
7 Ohio-related activity including email transmission to and from the state of
8 Ohio. Discovery of the subscribers are necessary to further establish
9 that (“AT&T”) through its “aggregators” unlawfully sold Plaintiff’s
10 ringtones whereby (“AT&T”) received revenue from Plaintiffs’ sound
11 recordings and had contact with the state Ohio.

12
13 27. Plaintiff is informed and upon such information
14 alleges according to the fact, each Defendant is subject to this Court’s
15 specific and general personal jurisdiction pursuant to due process
16 and/or the Ohio Long Arm Statue, due at least to each
17 Defendant’s substantial business in this forum, including: (i) at least
18 a portion of the infringement alleged herein; and/or (ii) regularly doing
19 or soliciting business, engaging in other persistent courses of
20 conduct, and/or deriving substantial revenue from goods and
21 services provided to individuals in Ohio and in this district.

22 23 VI. FACTUAL ALLEGATIONS

24 28. Plaintiff is informed and upon such information alleges according
25 to the fact. Plaintiff’s Copyrighted sound recordings were
26 automatically subject to copyright protection under 17 U.S.C. § 102(a)
27 when Plaintiff fixed such works in a tangible medium of expression.
28

1 Plaintiff received Copyright Registration PA 1-633-253 for sound
2 recordings entitled Slangtones and 40 other titles see Exhibit, which has an
3 effective date of June 17, 2009. These copyright registrations fulfill the
4 jurisdictional requirements of 17 U.S.C § 106A(a) or an *action* instituted
5 under section 411(b) regarding the copyrighted sound recording.
6 Additional plaintiff's unregistered mark Slangtones is protected
7 under Lanham Act, 15 U.S.C. § 1125.

8 29. Plaintiff is informed and upon such information
9 alleges according to the fact. Certificate of Copyright Registration
10 constitute prima facie evidence of the validity of the copyrights and the
11 facts stated in the certificates, under 17 U.S.C. § 401(c). Plaintiff
12 registered copyrights are entitled to a statutory presumption of validity.
13

14 30. Plaintiff is informed and upon such information
15 alleges according to the fact. Plaintiff developed the sound recording in
16 2006 developing additional ringtones in 2009 which a copyright
17 registration number: PA 1-633-253. The sound recordings are
18 copyright protected, pursuant to 17 U.S.C § 101. Plaintiff was a
19 developer of sound recordings shown in the Copyright and
20 registration. Defendant's exploited those rights through various
21 licensing arrangements with their "aggregators."
22

23 31. Plaintiff is informed and upon such information
24 alleges according to the fact, however Plaintiff is noted as author to
25 the works of the sound recordings which allowed Plaintiff to
26 develop various licensing arrangements mentioned herein, with third
27 parties namely AT&T's aggregator Mobile Streams. This license
28 generated profits, where Plaintiff, should have received a correct

1 account of its royalties.

2 32. Plaintiff is informed and upon such information
3 alleges according to the fact. Plaintiff developed these ringtones
4 with distribution worldwide through the Nickels Group and
5 Mobile Streams and has not enjoyed the true revenue from the sales
6 of his ringtones. Plaintiff believes artist and their musical content
7 are exploited because of industry accounting practices.

8 Many “aggregators” distribute artist content to other affiliate
9 websites which channel through wireless carriers network,
10 those aggregators issue to the artist their royalty reports. Many of the
11 affiliates were not listed on Plaintiff royalty report. In essence those
12 affiliates and carriers would enjoy 100% profits of unreported
13 royalty sales.
14

15 33. Plaintiff is informed and upon such information
16 alleges according to the fact, the Internet allows enormous opportunities
17 for copyright infringement of artist works and musical compositions to
18 be infringed and exploited. There are countless numbers of websites
19 unlawfully selling ringtones and songs of copyrighted works, which
20 compensation is never realized by the artist. Plaintiff believes the industry
21 have a practice “If the artist don’t, know don’t tell”. Allowing some
22 companies that license musical works to not report the sales to the
23 artist. Now the only way for the artist to learn that their works are
24 being infringed upon, is to do Internet key searches of their works in
25 hopes to uncover evidence of infringement.
26
27
28

1 34. Plaintiff is informed and upon such information
2 alleges according to the fact, Plaintiff in 2009 uncovered a
3 vast amount of websites selling Plaintiff's content which was not on the
4 royalty report provided by ("AT&T") aggregator Mobile Streams,
5 at which point, Plaintiff then inquired to Mobile Streams of this new
6 found evidence of Plaintiff's ringtones being sold on sites not
7 being reported on the royalty reports. However Plaintiff later to found
8 out AT&T's "aggregators" unlawfully sold Plaintiff content through
9 its network. Plaintiff then sent an email to Mobile Streams and
10 AT&T's attorney Timothy Johnson of this information indicating
11 that Plaintiff's ringtones were being sold on sites not being reported on
12 the royalty report. Mobile Streams denied any claims that they
13 provided Plaintiff's content to the sites in question. AT&T's
14 attorney Timothy Johnson, indicated via email in paraphrase they
15 could not intervene in that matter. Plaintiff's email to ("AT&T")
16 Johnson and his response would establish ("AT&T") had
17 actual knowledge of the infringing acts, which mentions the Plaintiff's
18 ringtones that were being infringed, who was infringing and when the
19 infringing was occurring. See *Ashcroft v. Iqbal* 556 U.S. 662, 678
20 (2009). ("AT&T") knew of the infringement acts took steps to avoid
21 acquiring knowledge.

22 35. Plaintiff is informed and upon such information
23 alleges according to the fact, ("AT&T") was "willfully blind" to the
24 infringement. Plaintiff then retained counsel, who conducted a veracious
25 search and sent out cease and desist letters to all infringing parties it was
26 then discovered that the content was provided to those parties by
27 Mobile Streams. Plaintiff's legal fees for this investigation and inquiry
28

1 amounted to nearly \$20,000 dollars, when the AT&T aggregator Mobile
2 Streams could have saved this expense by simply saying they provided
3 Plaintiff's content to the websites.

4
5 36. Plaintiff is informed and upon such information alleges
6 according to the fact. Plaintiff is the owner of copyrights in and to
7 the musical compositions at issue and have complied in all respects with
8 the copyright acts and with all other applicable laws in securing
9 copyright registrations and protecting and maintaining exclusive rights in
10 and to Plaintiff' sound recordings. Defendants and their
11 "aggregators" unlawfully made millions from Plaintiffs sound recording
12 which were available for sale and downloaded to millions
13 of subscribers, customers and/or users.

14
15 37. Plaintiff is informed and upon such information alleges
16 according to the fact. AT&T introduced Plaintiff to Mobile Streams
17 and on or about June 12, 2006, Plaintiff and Mobile Streams entered
18 into a one-year ringtone license with auto renewed, with the exceptions of
19 cancellation by written notice. (the "Ringtone License") covering the
20 World. Pursuant to the 2006 ringtone license, Plaintiff granted a license to
21 Mobile Streams whereby Plaintiff agreed to license its copyrighted
22 sound recordings, for which Plaintiff owned and controlled the exclusive
23 rights. In accordance with the ("Ringtone License"), Plaintiff granted
24 Mobile Streams the right to transmit the copyrighted sound
25 recordings through its network of Internet providers and
26 affiliates. Plaintiff's copyrighted sound recordings catalogue
27 were available to subscribers for downloading onto wireless devices.
28

1 The license agreement was not signed because Plaintiff wanted
2 additional provisions to be added. Meanwhile Plaintiff acted on a
3 verbal agreement, which included Plaintiff receiving royalty reports and
4 payments from Mobile Streams; in return for the grant of rights upon
5 Plaintiff's sound recordings; whereby Mobile Streams was to pay Plaintiff
6 an agreed upon royalty rate for each copyrighted sound
7 recording downloaded by subscribers/customers/users.

8 38. Plaintiff is informed and upon such information
9 alleges according to the fact. AT&T's aggregator Mobile Streams and
10 its affiliates were failing to keep accurate records occurring through their
11 services, and failed to account properly to Plaintiff for the royalties which
12 were owed. When Plaintiff attempted to exercise its contractual rights
13 to go online to review the royalty report, access was denied. Plaintiff made
14 verbal request to examine the books and reports of Mobile Streams, who
15 refused to give Plaintiff access to material information, interposed
16 frivolous objections to many of Plaintiff's request, and provided
17 incomplete and inaccurate documentation.

18 39. Plaintiff is informed and upon such information
19 alleges according to the fact, moreover, throughout the term of
20 the license agreements which existed, AT&T's aggregator
21 Mobile Streams, blatantly and willfully infringed upon Plaintiff
22 numerous valuable copyrights by (i) making Plaintiffs' ringtones
23 available to affiliates that were not on the royalty report list. (ii)
24 permitting worldwide downloading of Plaintiffs' ringtones.

25 40. Plaintiff is informed and upon such information alleges
26 according to the fact, In light of Mobile Streams material breaches of
27
28

1 the license agreements, Plaintiff did send email notifications to Mobile
2 Streams to remove its content on or about December 23, 2009 in
3 effect cancelling any agreement which may have existed. Although
4 the agreement that existed was unsigned, Plaintiff and
5 Mobile Streams acted on the agreement by virtue of the royalty
6 checks and royalty reports that were received by Plaintiff. Even after
7 the licensing agreement was expired or cancelled, AT&T's
8 "aggregators" continued through to receive revenue from Plaintiffs'
9 ringtones, thereby reaping an unlawful profit from the exploitation
10 of Plaintiffs' sound recordings which were sold through the AT&T network.

11 41. Plaintiff is informed and upon such information alleges
12 according to the fact, because AT&T introduced Mobile Streams
13 to Plaintiff, they were made aware through emails regarding the
14 problems associated with their "aggregators." Where Plaintiff would
15 send emails to AT&T's attorney Johnson and other key
16 senior executives. ("AT&T") had actual knowledge of specific acts
17 and failed to consider possible actions. Furthermore Plaintiff
18 evidence should conclude that ("AT&T") was "willfully blind" to the acts
19 that were occurring. Through the emails that was send by
20 Plaintiff regarding the infringement by their "aggregators",
21 should have made officials believed that the infringement was
22 likely occurring on their networks and they took deliberate actions
23 to avoid learning about the infringement.
24
25
26
27
28

A. COUNTS AND CAUSES OF ACTION

COUNT I

(FIRST CAUSE OF ACTION COPYRIGHT

INFRINGEMENT 1976, 17 U.S.C. §§101,106, 501)

42. Plaintiff reallege and incorporate by reference each and every allegation set forth above within paragraphs 1 through 41, inclusive, as through fully stated herein.

43. Plaintiff is informed and upon such information alleges according to the fact per taint to direct and unauthorized copying of plaintiff copyright through AT&T Mobility's involvement to direct copying through their network to ("AT&T") / AT&T Mobility Mobile devices. Plaintiff was unaware that Funmobile/Mobilefunster ("AT&T") "aggregators" were copying and selling Plaintiffs copyrighted sound recording through the ("AT&T") / AT&T Mobility LLC network as such ("AT&T") / AT&T Mobility indirectly had access to plaintiff's work, ." *Kregos v. Associated Press*, 3 F.3d 656, 662 (2d Cir. 1993). and (2) the ("AT&T") work has probative similarity. *See, e.g., Gates Rubber Co. v. Bando Chem. Indus.*, 9 F.3d 823, 832 (10th Cir. 1993), subjecting ("AT&T") to direct infringement. In *Playboy Enterprises, Inc. v. George Frena, d/b/a/ Techs Warehouse BBS Systems and Consulting, and Mark Dyess*, 839 F. Supp.1552 (M.D. Fla. 1993), the court granted summary judgment for direct copyright infringement against a bulletin board service ("BBS") which allegedly did not have any prior knowledge that its users uploaded and downloaded files to its server containing Playboy Enterprises, Inc.'s pictures without plaintiff's consent or other justification. Defendant BBS allegedly removed all infringing files when it was notified and subsequently monitored the server, but the court held lack of knowledge was not a defense.

44. By the actions alleged above, ("AT&T") / AT&T Mobility LLC has infringed and/or is continuing to infringe 's plaintiff's copyrights in relating to the copyrighted sound recordings by copying, reproducing, modifying, displaying and/or distributing without plaintiff's authorization, a recently discovered website which appears to be a ("AT&T") / AT&T Mobility LLC aggregator/affiliate Credo Mobile, because ("AT&T") / AT&T Mobility LLC is a carrier operators see Exhibit:

of infringing content as posted on Credo Mobile's/affiliates iLoop Mobile's website: Participating mobile operators:

"Currently T-Mobile, AT&T, and Sprint PCS (not available on all storefronts) support ringtones and wallpapers. AT&T and Sprint also support Java games. We will announce new participating as they join."

<http://dev.credoweb.mblade.iloopmobile.com/faq.ftl#Q10>

link to plaintiff ringtones See

http://dev.credoweb.mblade.iloopmobile.com/preview_ringtone?price_id=63643

http://dev.credoweb.mblade.iloopmobile.com/preview_ringtone?price_id=63639

45. Upon information and belief, after a reasonable opportunity for further investigation through discovery, to obtain sales records since Credo Mobile's counsel did admit Plaintiff Slangtones content was indeed on their website/third party iLoop Mobile. Because this content was sold to ("AT&T") / AT&T Mobility LLC subscribers through copying plaintiff sound recording to their mobile devices, plaintiff feels this is another example of direct copyright infringement by ("AT&T") / AT&T Mobility LLC.

1 46. Plaintiff is informed and upon such information alleges
2 according to the fact, ("A plaintiff claiming infringement of the exclusive-
3 distribution right can establish infringement by proof of actual distribution or
4 by proof of offers to distribute, that is, proof that the defendant 'made
5 available' the copyrighted work."); Arista Records, LLC v. Greubel, 453 F.
6 Supp. 2d 961, 969, 971 (N.D. Tex. 2006).

7
8 47. Plaintiff is informed and upon such information alleges
9 According to the fact, early August 2009, Plaintiff discovered through
10 an Internet search, plaintiff's Copyrighted sound recordings; that
11 various websites were not reported on the Mobile Streams royalty
12 report. Moreover, these websites, were exploiting his work
13 unlawfully offering Plaintiffs' sound recordings to millions of
14 subscribers through ("AT&T") / AT&T Mobility network allowing them
15 to benefit from the proceeds. Plaintiff contacted Mobile Streams providing
16 information that various websites were selling Plaintiff's
17 ringtones. ("AT&T's") aggregator Mobile Streams, indicated they
18 were unaware of any websites selling Plaintiffs' content outside the ones
19 on the royalty reports. Subsequently, Plaintiff sought counsel to provide to
20 those websites cease and desist letters. These letters Plaintiff
21 hoped would stop these sites from further infringement. The letters
22 also requested that these websites provide evidence of sales of
23 Plaintiffs' sound recording. ("AT&T's") aggregator Mobile Streams
24 was then made aware that any agreements between Plaintiff was to
25 be cancelled. Whereby, Mobile Streams was then advised to have
26 all content provided to third party providers removed, and that a
27 sales report outlining sales from these sites of Plaintiffs' sound
28 recording, be provided. After Plaintiff's attorneys finished their

1 copyright infringement investigation it was made known that
2 Mobile Streams provided websites unlawfully with Plaintiffs' content.

3 48. Plaintiff is informed and upon such information alleges according
4 to the fact, It would be understood by one ordinary person that such
5 communications using counsel in this matter should have made AT&T
6 "aggregators" aware that any further sales of Plaintiffs' sound
7 recordings by any of its third party providers affiliates or
8 subscribers would constitute willful infringement. Since the letters
9 the Defendants have enjoyed a financial profit from the sales of
10 Plaintiffs' sound recording. Whereby ("AT&T") / AT&T Mobility
11 would continue throughout 2012 to allow its users and or subscribers to
12 continue to purchase Plaintiffs' Copyright sound recordings ringtones,
13 free of reprisal. It is Plaintiffs' intention to seek action
14 and relief in this matter so that, this may not continue to happen.
15 Each of ("AT&T") / AT&T Mobility copyright infringement referenced
16 herein is willful with the meaning of 17.U.S.C. § 106. Plaintiff,
17 has provided ("AT&T") / AT&T Mobility fair notice, were this
18 complaint allege at lease some the particular infringing acts and times
19 of occurrence with specificity.

20
21 49. Plaintiff is exclusive owner and author of the sound recordings
22 claiming infringement.

23 50. Plaintiff is informed and upon such information alleges
24 according to the fact, ("AT&T") / AT&T Mobility profited from
25 the distribution and publication of these copyrighted works to
26 their customers as they collected fees for each transfer/transmission
27 but failed and /or refused to compensate Plaintiff as the holder, when
28

1 they were aware their “aggregators” unlawfully sold Plaintiffs’
2 sound recording through their network. The Fourth Circuit and
3 numerous district court decisions have held that making a
4 copyrighted work available for distribution to the public
5 without authorization from the copyright holder violates the
6 copyright holder’s distribution right under §106(3). In *Hoteling*
7 *v. Church of Jesus Christ of Latter-Day Saints*, 118 F.3d 199 (4th Cir.
8 1997).

9
10 51. Plaintiff is informed and upon such information alleges according
11 to the fact, due to the tremendously large reach of (“AT&T”) /

12
13 AT&T Mobility there is a tremendous amount of copyright
14 infringement of Plaintiffs’ copyright.

15 52. Plaintiff is informed and upon such information alleges according
16 to the fact, (“AT&T”) / AT&T Mobility violated the Copyright Act
17 pursuant to 28 U.S.C. § 501, in that (“AT&T”)
18 AT&T Mobility, never requested from Plaintiff permission to
19 profit from the sales of Plaintiff’s Copyright sound recordings.
20 (“AT&T”) / AT&T Mobility never accounted for the amount of transactions
21 generating from their “aggregators.” (“AT&T”) / AT&T Mobility,
22 knowingly facilitated and willfully provided the means for its
23 “aggregators” to distribute Plaintiffs’ copyrighted sound recordings
24 yet Plaintiff was never paid through these infringing acts, even after they
25 provided knowledge to the (“AT&T”) / AT&T Mobility the infringement was
26 occurring. Therefore these actions are willful.
27
28

1 53. Plaintiff is informed and upon such information
2 alleges according to the fact , The infringement of each Plaintiffs'
3 rights in each of the sound recordings and each time the works
4 were distributed constitutes a separate and distinct act of
5 infringement subject to 28 U.S.C. § 504.
6

7 54. Plaintiff is informed and upon such information
8 alleges according to the fact, as a direct result of the foregoing
9 conduct, Plaintiff is entitled to damages as against Defendants in
10 an amount that is presently unknown.
11

12 55. Plaintiff is informed and upon such information alleges
13 according to the fact , As a direct result of ("AT&T") /
14 AT&T Mobility infringement Plaintiffs are entitled to the
15 maximum statutory penalties under 17 U.S.C. § 504, in the amount
16 of \$150,000 with respect to each timely registered work that was
17 infringed, to disgorgement of ("AT&T") / AT&T Mobility profits, and to
18 any and all other relief the Court deems just and proper under law.
19

20 56. Plaintiff is informed and upon such information alleges according
21 to the fact , ("AT&T") / AT&T Mobility conduct has caused, and
22 unless enjoined by this Court, will continue to cause Plaintiff great
23 and irreparable injury that cannot be compensated or measured
24 in money. Plaintiff has no adequate remedy at law. Pursuant to
25 17 U.S.C § 502, Plaintiff is entitled to a permanent injunction
26 prohibiting further infringement of Plaintiffs' copyright.
27
28

1 57. Plaintiff is informed and upon such information alleges according to
2 the fact, Plaintiff is entitled to their cost, including reasonable attorney
3 fees if one become available pursuant to 17 U.S.C § 505. Plaintiff
4 has suffered economic damage and irreparable harm as a result
5 of ("AT&T") / AT&T Mobility unfair acts hereon.
6

7
8 **COUNT II**
9 **(SECOND CAUSE OF ACTION INDUCEMENT OF**
10 **COPYRIGHT INFRINGEMENT 17 U.S.C. §106)**

11 58. Plaintiff reallege and incorporate by reference each and
12 every allegation set forth above within paragraphs 1 through 57,
13 inclusive as through fully stated herein.
14

15 59. Plaintiff is informed and upon such information alleges according
16 to the fact, ("AT&T") "aggregators" subscribers, users, customers and/or
17 AT&T subscribers, users, customers have directly infringed and were
18 directly infringing Plaintiff's copyrights on a daily basis by, for example
19 purchasing reproductions of sound recordings embodying Plaintiffs'
20 compositions in violation of Plaintiff's exclusive rights under the Copyright
21 Act, 17 U.S.C. § 106, et seq. The scope of the infringement is massive,
22 encompassing millions of Plaintiff's sound recordings. Defendants are
23 liable for inducing the copyright infringement of their aggregators.

24 60. Plaintiff is informed and upon such information alleges according
25 to the fact, Defendants continue to deal with Mobile Streams who uses
26 "aggregators" that appear to depend heavily on infringing uses.
27
28

1 Defendants' have knowledge of a past class actions settlements involving
2 Funmobile/MobileFunster which involved Defendants. Allegations of
3 copyright infringement to unauthorized charges still these companies utilize
4 their network without fearing any repercussions in all likely hood they feel
5 Defendants concerns is to just make profits from wrong doing, for which a
6 blind eye is turned by the Defendants to the infringement activities, where
7 they fail to modify their system to make it less capable of infringement or
8 other wrongful acts by "aggregators".

9
10 61. Plaintiff is informed and upon such information alleges according
11 to the fact, even yet Mobile Streams and Funmobile/Moiblefunster has
12 even evaded or not responded to these proceedings. One of Plaintiff's
13 contacts at Mobile Streams is Shane Gosling who can be reached at
14 Defendants website. Funmobile/Mobilefunster recently removed it site
15 www.mobilefunster.com which also listed Defendants. The site is being

16
17 redirected with the following note: "As a result of changes in mobile carrier
18 policies we have discontinued service. AT&T users may continue to access
19 these services through February 14, 2014. If you previously subscribed to
20 this service, your account(s) have been cancelled. Previous subscribers
21 will not receive any further messaging or charges from us after that date, If
22 you have any questions about previous services, messages, or charges,
23 please contact us at help@sendme.com."

24
25 62. Plaintiff is informed and upon such information alleges according
26 to the fact, Defendants willfully ignore knowledge that their aggregators
27 were infringing and were provided with evidence whereby actively
28 facilitating, encouraging and enticing their "aggregators" subscribers/users,

1 customers to engage in the infringement. Defendants intended to bring
2 about infringement.

3
4 63. Plaintiff is informed and upon such information alleges according
5 to the fact, Defendants further have induced by, for example not insisting
6 that their aggregators remove Plaintiff's copyrighted sound recordings and
7 maintaining a business model to profit directly from infringing use, including
8 sales to subscribers, users and or customers through their network.
9 Through the conduct described above, Defendants are liable for inducing
10 the infringement described herein. Each violation of Plaintiff's rights in and
11 to each copyrighted sound recording constitutes a separate and distinct act
12 of copyright infringement. Defendants' infringement has caused substantial
13 damage and harm to Plaintiff. As a direct and proximate result of
14 Defendants' infringement, Plaintiff is entitled to statutory damages under
15 17 U.S.C. § 504(c) for each of Plaintiff works that have been infringed
16 through Defendants network. Defendants' infringement is and has
17 been willful, intentional, purposeful, and in disregard of the rights of
18 Plaintiffs'. The Court should therefore increase the award of statutory
19 damages to up to \$150,000 per infringed works.

20
21 64. Plaintiff is informed and upon such information alleges
22 according to the fact, the identities of the infringed works and the total
23 number of infringed works will be determined during discovery, and the
24 pleadings adjusted accordingly. As an alternative to statutory damages
25 (and for infringed works that do not qualify for statutory damages if any),
26 Plaintiff at his election prior to profits of the Defendants attributable to the
27 infringement. 17 U.S.C. § 504(a)-(b). Plaintiff is entitled to cost, including
28 reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. Defendants'

1 conduct has caused harm, and unless enjoined by this Court, will
2 continue to cause Plaintiff great and irreparable injury that cannot be fully
3 compensated or measured in money.

4
5 65. Plaintiff is informed and upon such information alleges
6 according to the fact, Plaintiff have no adequate remedy to law. Pursuant
7 to 17 U.S.C § 502, Plaintiff is entitled to a permanent injunction prohibiting
8 further infringement of Plaintiffs' copyright. At all times relevant to this
9 action, ("AT&T") have had the right and ability to control and/supervise the
10 infringing conduct of their "aggregators" subscribers, and (ii) have had a
11 direct financial interest in, and derived substantial financial benefit from,
12 the infringement of Plaintiff's copyrighted sound recordings. Plaintiff has
13 suffered economic damage and irreparable harm as a result of Defendants
14 unfair acts hereon.

15
16 **COUNT III**
17 **(THIRD CAUSE OF ACTION CONTRIBUTORY**
18 **COPYRIGHT INFRINGEMENT 17 U.S.C. §106)**

19 66. Plaintiff reallege and incorporate by reference each and
20 every allegation set forth above within paragraphs 1 through 65, inclusive
21 as through fully stated herein.

22
23 67. Plaintiff is informed and upon such information alleges according to
24 the fact, ("AT&T") "aggregators" subscribers, customers
25 and users and/or AT&T subscribers, customers and users purchasing and
26 downloading Plaintiff's copyright sound recording have directly infringed
27 and are directly infringing Plaintiff's copyright on a daily basis by, for
28

1 example purchasing copying sound recordings embodying Plaintiff's
2 copyrighted works in violation of Plaintiffs' exclusive rights under the
3 Copyright Act, 17 U.S.C. §§ 106, 501. The scope of the infringement is
4 massive, encompassing millions of Plaintiffs' sound recordings.

5
6 68. Plaintiff is informed and upon such information alleges according
7 to the fact ("AT&T") are liable as contributory infringers for the
8 copyright infringement committed through its network, by Defendants
9 because Defendants had actual knowledge of specific acts of the
10 infringement (Exhibit A). *Napster Inc.*, 239 F.3d at 1021. Plaintiff provided
11 to Defendants the link to the tiles that were being infringed, who infringed
12 them, and when the infringement occurred.

13
14 69. Plaintiff is informed and upon such information alleges according
15 to the fact ("AT&T") failure to act upon the emails they received
16 regarding their "aggregators" infringing Plaintiffs copyright and receiving
17 a financial benefit, Defendants are contributory liable for the infringement
18 described herein. Defendants have, in addition to the actions above,
19 provided the network and support and instructions for the infringement
20 through Defendants "aggregators" interactive websites, and has refused to
21 exercise their ability to stop the infringement. Above all Defendants' failure
22 to implement a digital rights management system promotes" infringement.

23 70. Plaintiff is informed and upon such information alleges
24 according to the fact, through the conduct described above, Defendants
25 are contributory liable for the infringement described herein. Each
26 violation of each Plaintiff's rights in and to each copyrighted sound
27 recording constitutes a separate and distinct act of copyright infringement.
28

1 Defendants' infringement has caused substantial damage and harm to
2 Plaintiff. As a direct and proximate result of Defendants' infringement,
3 Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c) for each
4 of Plaintiff works that have been infringed through Defendants network.
5 Defendants' infringement is and has been willful, intentional, purposeful,
6 and in disregard of the rights of Plaintiffs'. The Court should therefore
7 increase the award of statutory damages to up to \$150,000 per
8 infringed works.

9
10 71. Plaintiff is informed and upon such information alleges according
11 to the fact. The identities of the infringed works and the total number of
12 infringed works will be determined during discovery, and the pleadings
13 adjusted accordingly. As an alternative to statutory damages (and for
14 infringed works that do not qualify for statutory damages if any), Plaintiff at
15 his election prior to profits of the Defendants attributable to the
16 infringement. 17 U.S.C. § 504(a)-(b). Plaintiff is entitled to cost, including
17 reasonable attorneys' fees, pursuant to 17 U.S.C. § 505. Defendants'
18 conduct has caused harm, and unless enjoined by this Court, will
19 continue to cause Plaintiff great and irreparable injury that cannot be fully
20 compensated or measured in money.

21
22 72. Plaintiff is informed and upon such information alleges according
23 to the fact, Plaintiff have no adequate remedy to law. Pursuant to 17
24 U.S.C § 502, Plaintiff is entitled to a permanent injunction prohibiting
25 further infringement of Plaintiffs' copyright. At all times relevant to this
26 action, ("AT&T") have had the right and ability to control and/supervise the
27 infringing conduct of their "aggregators" subscribers, and (ii) have had a
28 direct financial interest in, and derived substantial financial benefit from,

1 the infringement of Plaintiff's copyrighted sound recordings. Plaintiff has
2 suffered economic damage and irreparable harm as a result of Defendants
3 unfair acts hereon.

4
5 **COUNT IV**
6 **(FOURTH CAUSE OF ACTION VICARIOUS**
7 **COPYRIGHT INFRINGEMENT 17 U.S.C. §106)**

8 73. Plaintiff reallege and incorporate by reference each and every
9 allegation set forth above within paragraphs 1 through 72, inclusive, as
10 through fully stated herein.

11
12 74. Plaintiff is informed and upon such information alleges according
13 to the fact, ("AT&T") "aggregators" subscribers, customers and/ or users
14 AT&T subscribers, customers and/or users purchasing and downloading
15 Plaintiff's sound recordings through AT&T's network, have directly infringed
16 and are directly infringing Plaintiffs' copyrights on a daily a basis by, for
17 example purchasing copying sound recordings embodying Plaintiffs'
18 copyright Act, 17 U.S.C. §§106, 501. The scope of the infringement is
19 massive, encompassing millions of Plaintiffs' sound recordings.
20 Defendants are liable as vicarious infringers for the copyright infringement
21 committed via Defendants network.

22 75. Plaintiff is informed and upon such information alleges
23 according to the fact, Defendants have the right and ability to supervise
24 the infringing activity" and had a direct financial interest in the activity.

25
26 76. Plaintiff is informed and upon such information alleges according to
27 the fact, at all times relevant to this action, ("AT&T") (i) have the
28 right and ability to control and/supervise the infringing conduct of their

1 “aggregators” and/or AT&T subscribers, and (ii) have had a direct financial
2 interest in, and derived substantial financial benefit from, the infringement
3 of Plaintiff’s copyrighted sound recordings via the (“AT&T”) network.

4 Defendants’ ability to not supervise and control the infringing activities of
5 their aggregators subscribers customers and/or AT&T subscribers,
6 customers user is further evidence by the facts alleged herein. Defendants
7 derived direct and substantial benefit from infringement, including offering
8 for sale on their network and/or their “aggregators” website, the value of
9 which is based essentially so subscribers could purchase and download
10 Plaintiff’s sound recordings.

11 77. Plaintiff is informed and upon such information alleges according to
12 the fact, the financial benefit derived by Defendants’ is further evidence by
13 the facts alleged herein. (“AT&T”) has or have the ability to control the
14 infringing act of its “aggregators” because they have a contractual right to
15 exclude an aggregator for any reason, Ninth Circuit, in Fonovisa v. Cherry
16 Auction. Additionally (“AT&T”) had a financial interest in the infringing acts
17 because their billing system are aligned.

18
19 78. Plaintiff is informed and upon such information alleges according to
20 the fact, (“AT&T”) company instruction to Aggregators Consent
21 Management policy of Non Compliance For each violation, AT&T reserves
22 all rights and remedies under its agreements with aggregators. These
23 rights and remedies may include (a) suspending existing short codes, (b)
24 restricting aggregators from provisioning new short codes and campaigns,
25 and/or (c) terminating the agreement between AT&T and the aggregator.

26
27 79. Plaintiff is informed and upon such information alleges according
28 to the fact, through the conduct described above, Defendants are

1 vicariously liable for the infringement described herein. Each violation of
2 each of Plaintiffs' rights in and to each copyright sound recordings
3 composition constitutes a separate and distinct act of copyright
4 infringement. Defendants' infringement has caused substantial damage to
5 Plaintiff. As a direct and proximate result of Defendants' infringement,
6 Plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c)
7 for each of Plaintiff works that have been infringed through Defendants
8 network. Defendants' infringement is and has been willful, intentional,
9 purposeful, and in disregard of the rights of Plaintiffs'. The Court should
10 therefore increase the award of statutory damages to up to \$150,000 per
11 infringed works.

12 80. Plaintiff is informed and upon such information alleges according
13 to the fact. The identities of the infringed works and the total number of
14 infringed works will be determined during discovery, works that do
15 not qualify for statutory damages in any way), Plaintiff at his election
16 prior to profits of the Defendants attributable to the infringement.

17 17 U.S.C. § 504(a)-(b). Plaintiff is entitled to cost, including
18 reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

19 Defendants' conduct has caused harm, and unless enjoined
20 by this Court, will continue to cause Plaintiff great and irreparable injury
21 that cannot be fully compensated or measured in money. Plaintiff have
22 no adequate remedy to law. Pursuant to 17 U.S.C § 502, Plaintiff
23 is entitled to a permanent injunction prohibiting further infringement
24 of Plaintiffs' copyright. At all times relevant to this action, ("AT&T")
25 have had the right and ability to control and/supervise the
26 infringing conduct of their aggregators subscribers, and (ii) have had
27 a direct financial interest in, and derived substantial financial benefit
28

1 from, the infringement of Plaintiff's copyrighted sound recordings.
2 Plaintiff has suffered economic damage and irreparable harm as
3 a result of Defendants unfair acts hereon.

4 **COUNT V**
5 **(FIRTH CAUSE OF ACTION COMMON LAW**
6 **COPYRIGHT INFRINGEMENT)**
7

8 81. Plaintiff reallege and incorporate by reference each and every
9 allegation set forth above within paragraphs 1 through 80, inclusive, as
10 through fully stated herein.
11

12 82. Plaintiff is informed and upon such information alleges according
13 to the fact, Plaintiff's copyrighted sound recordings PA 1-633-253, is
14 subject to *common-law* doctrine of *willful blindness to infringement*.
15

16 83. Plaintiff is informed and upon such information alleges according
17 to the fact, Plaintiff efforts to notify AT&T Mobility / ("AT&T") attorney
18 Timothy Johnson through email, regarding the infringement that was
19 occurring on their network, where it was told AT&T Mobility / ("AT&T")
20 could not intervene regarding the actions of vendors (aggregators). Plaintiff
21 even brought concerns of this matter through a telephone conference,
22 initiated by Joseph Beasley so that Plaintiff could speak candidly to AT&T
23 Mobility / ("AT&T") key executives namely Mr. Ralph de la Vega, regarding
24 the infringement occurring over its network, through its aggregators. *In re*
25 *Aimster Copyright Litigation*, 334 F.3d 643 (7th Cir. 2003), in which the
26 defendants argued that the file-swapping technology was designed in such
27 a way that they had no way of monitoring the content of swapped files.
28 They suggested that their inability to monitor the activities of users meant

1 that they could not be contributing to copyright infringement by the users.
 2 The court held that this was willful blindness on the defendant's part and
 3 would not constitute a defense to a claim of contributory infringement.

4 In another case the trial court's decisions turned on a variety of
 5 considerations that included issues such as: (1) the specificity of requisite
 6 knowledge held by the ISP. The second circuit distinguished between
 7 actual knowledge, "Red Flag" awareness, and general knowledge; (2) The
 8 issue of willful blindness on behalf of the ISP. A doctrine that may be
 9 understood by the common saying, "what I don't know won't hurt me"; and
 10 (3) the ISPs' "right and ability" to control the individual infringer's activity.

11
 12 84. Plaintiff is informed and upon such information alleges according
 13 to the fact, Plaintiff efforts to notify AT&T Mobility / ("AT&T"), subsequently
 14 it was discovered that alleged copying was being done of Plaintiff's sound
 15 recordings their aggregators where using the AT&T Mobility / ("AT&T"),
 16 network to sell plaintiff's ringtones.

17
 18 85. Plaintiff is informed and upon such information alleges according
 19 to the fact, as such plaintiff's sound recordings and copying, are being
 20 allegedly copied through the AT&T Mobility / ("AT&T") network, which was
 21 recently discovered, wireless carrier Credo Mobile were recently served
 22 with a cease and desist letter, ("AT&T") see Exhibit of infringing content:
 23 as posted on their website: Participating mobile operators:

24 "Currently T-Mobile, AT&T, and Sprint PCS (not available on all
 25 storefronts) support ringtones and wallpapers. AT&T and Sprint also
 26 support Java games. We will announce new participating as they join."

27 <http://dev.credoweb.mblade.iloopmobile.com/faq.ftl#Q10>

28 link to plaintiff ringtones See Credo Mobile, Inc. / iloop Mobile Inc.

1 http://dev.credoweb.mblade.iloopmobile.com/preview_ringtone?price_id=63643

2
3 http://dev.credoweb.mblade.iloopmobile.com/preview_ringtone?price_id=63639

4
5 . 86. Plaintiff is informed and upon such information alleges according
6 to the fact, (“AT&T”) / AT&T Mobility’s *common-law* doctrine of *willful*
7 *blindness to infringement*, in which (“AT&T”) / AT&T Mobility ignored
8 multiple notices to infringing conduct. Plaintiff possesses the
9 exclusive rights to sell, copy, distribute and perform these sound
10 recordings. The *willful blindness to infringement*, of Plaintiff rights by AT&T
11 Mobility / (“AT&T”) network in each of its sound recordings. The
12 infringement of Plaintiff’s rights by (“AT&T”) / AT&T Mobility in each of its
13 sound recordings constitutes a separate and distinct act of *willful blindness*
14 *to infringement*. As a direct and proximate result of (“AT&T”) / AT&T
15 Mobility violation of Plaintiffs’ rights in and to the sound recordings, Plaintiff
16 has suffered damages in an amount to be proven at trial. Plaintiff is entitled
17 to recover all proceeds and other compensation received or to receive by
18 Defendants arising from its infringement of Plaintiffs’ sound recordings, and
19 is entitled to an accounting of as certain the amount of such profits and
20 compensation.

21
22 87. Plaintiff is informed and upon such information alleges
23 according to the fact, (“AT&T”) / AT&T Mobility acts of *willful*
24 *blindness to infringement* are willful, intentional and purposeful, in
25 disregard of Plaintiffs’ rights, and Plaintiff is entitled to punitive and
26 statutory damages in addition to actual damages. Plaintiff is further entitled
27 to cost and attorney fees pursuant to 17 U.S.C § 505. Defendants and/or
28

1 their “aggregators” subscribers, customers and/or users purchasing and
 2 downloading Plaintiffs’ copyrights on a daily basis by, for example
 3 purchasing copying Plaintiffs’ sound recordings have through the (“AT&T”)
 4 / AT&T Mobility network directly infringed Plaintiffs’ copyrights on a daily
 5 basis by, for example purchasing copying sound recordings embodying
 6 Plaintiffs’ copyrighted works in violation of Plaintiff’s copyright. Plaintiff has
 7 suffered economic damage and irreparable harm as a result of (“AT&T”) /
 8 AT&T Mobility unfair acts hereon.

9
 10 **COUNT VI**
 11 **(SIXTH CAUSE OF ACTION FEDERAL UNFAIR**
 12 **COMPETITION UNDER LANHAM ACT 15.U.S.C§ 125))**
 13

14 88. Plaintiff incorporates by reference paragraphs 1 through 86 above as
 15 though fully set forth herein.
 16

17 89. Plaintiff is informed and upon such information alleges according to
 18 the fact, Plaintiff owns the mark Slangtones, is the unregistered
 19 mark of Plaintiff protected under federal Lanham Act, 15 U.S.C. § 1125
 20 according to the fact Plaintiff owned and marketed its website
 21 www.slangtones.com in commerce however because of the infringement
 22 occurring plaintiff’s removed this site, notwithstanding factures (“AT&T”) /
 23 AT&T Mobility through its aggregators plaintiff’s mark Slangtones was
 24 being falsely mislead and representation of fact, that plaintiff’s Slangtones
 25 product was made available on their aggregators/affiliates website with the
 26 AT&T logo, would lead consumers that plaintiff mark was authorized to be
 27
 28

1 make available for sale and thus ("AT&T") / AT&T Mobility benefited
2 financially for his misleading representation of plaintiff's mark and ringtone
3 products.

4
5 90. Plaintiff is informed and upon such information alleges according to
6 the fact having plaintiff mark on ("AT&T") / AT&T Mobility aggregators
7 website, actually deceived, a substantial segment of plaintiff's potential
8 customers.

9
10
11 91. Plaintiff is informed and upon such information alleges according to
12 the fact ("AT&T") / AT&T Mobility false and misleading sales to its AT&T
13 mobile users through its aggregator website where plaintiffs mark
14 Slangtones was used in injure both consumers and Plaintiff.

15
16
17 92. Plaintiff is informed and upon such information alleges according to
18 the fact ("AT&T") / AT&T Mobility's false and misleading advertising
19 statements and omissions violate Section 43(a) of the Lanham Act, 15
20 U.S.C. § 1125(a).

21
22
23 93. Plaintiff is informed and upon such information alleges according to
24 the fact ("AT&T") / AT&T Mobility has caused, and will continue to cause,
25 immediate and irreparable injury to Plaintiff, including injury to Plaintiff's
26 mark, reputation and goodwill, for which there is no adequate remedy at
27
28

1 law. Plaintiff is therefore entitled to an injunction under 15 U.S.C. § 1116
2 restraining (“AT&T”) / AT&T Mobility, its agents, employees,
3 representatives and all persons acting in concert with (“AT&T”) / AT&T
4 Mobility is likely to cause confusion, or to cause mistake, or to deceive as
5 to the affiliation, connection, or association of such person with another
6 person, or as to the origin, sponsorship, or approval of his or her goods,
7 services, or commercial activities by another person.
8
9

10
11 94. Plaintiff is informed and upon such information alleges according to
12 the fact Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover
13 from (“AT&T”) / AT&T Mobility the damages sustained by plaintiff as a
14 result of (“AT&T”) / AT&T Mobility’s acts in violation of 15 U.S.C. § 1125(a).
15 Plaintiff is at present unable to ascertain the full extent of the monetary
16 damages it has sustained by reason of (“AT&T”) / AT&T Mobility’s acts.
17
18

19
20 95. Plaintiff is informed and upon such information alleges according to
21 the fact Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover
22 from (“AT&T”) / AT&T Mobility’s Plaintiff the gains, profits and advantages
23 that (“AT&T”) / AT&T Mobility’s has obtained as a result of (“AT&T”) / AT&T
24 Mobility’s acts in violation of 15 U.S.C. § 1125(a). Plaintiff is at present
25 unable to ascertain the full extent of the gains, profits and advantages
26 (“AT&T”) / AT&T Mobility’s has obtained by reason of (“AT&T”) / AT&T
27
28

1 Mobility's acts.

2
3 96. Pursuant to 15 U.S.C. § 1117, Plaintiff is
4 further entitled to recover the costs of this action. Moreover, Plaintiff is
5 informed and believes, and on that basis alleges, that ("AT&T") / AT&T
6 Mobility's conduct was undertaken willfully and with the intention of causing
7 confusion, mistake or deception, making this an exceptional case entitling
8 Plaintiff to recover additional damages and reasonable attorneys' fees.
9
10

11
12 **COUNT VII**
13 **(SEVENTH CAUSE OF ACTION UNFAIR**
14 **COMPETITION UNDER OHIO LAW § 4165.02)**

15 97. Plaintiff reallege and incorporate by reference each and every
16 allegation set forth above within paragraphs 1 through 96, inclusive, as
17 through fully stated herein.
18

19 98. Plaintiff is informed and upon such information alleges according to
20 the fact, ("AT&T") / AT&T Mobility did not take steps to stop their
21 aggregators, affiliates ect, preventing them from the unauthorized selling
22 of plaintiff's ringtones through their network; which deceived
23 consumers that plaintiff ringtones and mark were ("AT&T") / AT&T
24 Mobility's ; because the AT&T logo appeared on the aggregators website
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26
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1 for anyone who wanted to select and purchase plaintiff's ringtones. Yet the
2 fact plaintiff had its own site www.slangtones.com, for which the
3 unauthorized practice to copy plaintiff ringtones through ("AT&T") / AT&T
4 Mobility network by aggregators affiliates competed against the plaintiff's
5 own use of the same property." Mp3Board, Inc., 2002 WL 1997918, at *12
6 (quoting Roy Exp. Co., 672 F.2d at 1105). Ohio law, unfair competition
7 "ordinarily consists of representations by one person, for the purpose of
8 deceiving the public, that his or her goods are those of another."
9 Landskroner v. Landskroner, 154 Ohio App.3d 471, 490-491, 797N.E.2d
10 1002, 1017 (Ohio Ct. App. 2003).

11
12
13
14
15 99. Plaintiff is informed and upon such information alleges according to
16 the fact, ("AT&T") / AT&T Mobility was fully aware after being in direct
17 contact with plaintiff for more than 7 years, plaintiff was intending to
18 becoming an aggregators, unbeknownst to plaintiff its ringtones were
19 being unauthorized marketed through ("AT&T") / AT&T Mobility
20 aggregators for which they were aware thus plaintiff was deceived.

21
22 100. Plaintiff is informed and upon such information alleges according to
23 the fact, Plaintiff has suffered damages in an amount to be proven at
24 trial. Plaintiff is entitled to recover all proceeds and other compensation
25 received or to receive by ("AT&T") / AT&T Mobility arising from its Unfair
26 Competition Under Ohio Law of Plaintiffs' sound recordings, and is entitled
27 to an accounting to ascertain the amount of such profits and
28 compensation. Plaintiff has suffered economic damage and irreparable

1 harm as a result of ("AT&T") / AT&T Mobility unfair acts hereon. ("AT&T")
2 / AT&T Mobility acts are willful, which was purposeful, in disregard of
3 Plaintiffs' rights, and Plaintiff is entitled to punitive and statutory damages
4 in addition to actual damages. Plaintiff is further entitled to cost and
5 attorney fees pursuant to 17 U.S.C § 505.

6
7 **COUNT VIII**
8 **(EIGHTH CAUSE OF ACTION DECEPTIVE AND UNFAIR**
9 **TRADE PRACTICES UNDER OHIO LAW**
10 **OHIO REV. CODE § 4165.02(A)**
11

12 101. Plaintiff reallege and incorporate by reference each and every
13 allegation set forth above within paragraphs 1 through 100, inclusive, as
14 through fully stated herein.
15

16 102. Plaintiff is informed and upon such information alleges according to
17 the fact 's plaintiff's use of and rights in the Slangtones Mark predates
18 ("AT&T") / AT&T Mobility' use of a similarly confusing mark used in the
19 sales of plaintiff ringtone through its network by its aggregators.

20 103. Plaintiff is informed and upon such information alleges according to
21 the fact ("AT&T") / AT&T Mobility' actions in connection with plaintiff
22 ringtones and the use of its mark Slangtones being sold through its
23 network by its aggregators who were apart of these actions including newly
24 discovered Credo Mobile affiliates, is likely to deceive and cause
25 confusion and mistake among consumers as to the source or origin of
26 those goods provided by or sold by ("AT&T") / AT&T Mobility' because their
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1 logo appeared on the aggregators website and plaintiff's content that was
2 being copied and sold which was unauthorized.

3 104. Plaintiff is informed and upon such information alleges according to
4 the fact plaintiff has never authorized, licensed or otherwise condoned or
5 consented to ("AT&T") / AT&T Mobility' use of the Slangtones Mark in
6 connection with their aggregators who were part of these actions or
7 mentioned herein as newly discovered aggregators/affiliates.

8 105. Plaintiff is informed and upon such information alleges according to
9 the fact The conduct of ("AT&T") / AT&T Mobility', as alleged herein,
10 constitutes unfair competition under the common law of Ohio.
11

12 106. Plaintiff is informed and upon such information alleges according to
13 the fact ("AT&T") / AT&T Mobility' conduct has been deliberate and willful
14 and has been committed with the intent to cause confusion and mistake, to
15 deceive the public, and/or to misrepresent the affiliation, connection or
16 sponsorship of the ("AT&T") / AT&T Mobility' commercial activities with
17 plaintiff.

18 107. Plaintiff is informed and upon such information alleges according to
19 the fact ("AT&T") / AT&T Mobility' will continue their acts of unfair
20 competition, causing irreparable injury to plaintiff, unless such activities are
21 enjoined by this Court.
22
23

24 .
25 **COUNT IX**
26 **(NINTH CAUSE OF ACTION UNJUST ENRICHMENT)**

27 108. Plaintiff reallege and incorporate by reference each and every
28

1 allegation set forth above within paragraphs 1 through 106, inclusive, as
2 through fully stated herein.

3 109. Plaintiff is informed and upon such information alleges according to
4 the fact there was no written contract between plaintiff and ("AT&T") /
5 AT&T Mobility, however their actions in connection with its
6 aggregators and its direct contacts with plaintiff for over
7 several years which given rise to an *implied contract between*
8 *the parties, when one side has provided a benefit for which it should be*
9 *compensated. Davis v. Lawyers Title Ins. Corp., No. 06-357, 2007 WL*
10 *782158, at *5 (N.D. Ohio Mar. 13, 2007)..* Plaintiff was working toward
11 meeting the requirements of becoming a direct aggregator, affiliate to
12 ("AT&T") / AT&T Mobility', thus a transaction by plaintiff submitting it's
13 ringtones to ("AT&T") / AT&T Mobility' where plaintiff was provided with a
14 short code later to have its ringtones to be test marketed in 2006 to
15 determine if its subscribers would have favorable liking to plaintiff's sound
16 recording followed by plaintiff receiving the sales report of the test market
17 sales, subsequently it was discovered through its aggregators direct
18 copying of plaintiff's ringtones through the network of ("AT&T") / AT&T
19 Mobility' who received an unjust enrichment under Ohio law.
20

21 110. Plaintiff is informed and upon such information alleges according to
22 the fact 's although plaintiff had efforts to become an
23 aggregator as mentioned in these proceedings, ("AT&T") / AT&T
24 Mobility' received a benefit/revenue of the unauthorized sales of plaintiff's
25 valued sound recordings without payment or restitution to plaintiff, where
26 ("AT&T") / AT&T Mobility' had knowledge of such a benefit being paid to
27 them by its aggregators in conjunction with the unauthorized
28

1 sales of plaintiff' ringtones being sold by its aggregators/affiliates through
2 its network. Unjust enrichment occurs when a party retains money or
3 benefits which, in justice and equity, belong to another. Hummel v.
4 Hummel (1938), 133 Ohio St. 520, 528; Liberty Mut. Ins. Co. v. Indus.
5 Comm. (1988), 40 Ohio St.3d
6 109, 110-111.

7
8 111. Plaintiff is informed and upon such information alleges according to
9 the fact. Plaintiff introduced evidence showing that plaintiff holds a valid
10 copyright for its sound recordings in connection with these actions of which
11 were infringed and sold through the network of ("AT&T") / AT&T Mobility'
12 by its aggregators Mobile Streams Inc., Funmobile Ltd and
13 Mobilefunster Inc. and now newly discovered allegedly Credo Mobile/iLoop
14 Mobile Inc.; where plaintiff should have or should receive a royalty
15 interest that ("AT&T") / AT&T Mobility' accepted and retained the benefit
16 conferred by plaintiff, despite repeated requests by plaintiff prior to any
17 actions that it aggregators mentioned Mobile Stream, Inc. Funmobile
18 Ltd and Mobilefunster, Inc. were infringing on its ringtones, this
19 provided ("AT&T") / AT&T Mobility' at best enough information to
20 investigate the allegations, however plaintiff through its own
21 investigation found out ("AT&T") / AT&T Mobility' had knowledge
22 of the activities or should have reasonably known of the infringing
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1 activity, plaintiff sound recording were being copied through its
2 network, for which plaintiff never received payment for which it was
3 entitled, for which it would be unjust and inequitable for ("AT&T") /
4 AT&T Mobility' to retain the royalties to which he was not entitled.
5

6
7 112. Plaintiff is informed and upon such information alleges according to
8 the fact, Plaintiff has suffered damages in an amount to be proven at
9 trial. Plaintiff is entitled to recover all proceeds and other compensation
10 received or to receive by ("AT&T") / AT&T Mobility arising from its Unjust
11 enrichment of Plaintiffs' sound recordings, and is entitled to an accounting
12 to ascertain the amount of such profits and compensation. Plaintiff has
13 suffered economic damage and irreparable harm as a result of ("AT&T") /
14 AT&T Mobility unfair acts hereon. ("AT&T") / AT&T Mobility acts are willful,
15 which was purposeful, in disregard of Plaintiffs' rights, and Plaintiff is
16 entitled to punitive and statutory damages in addition to actual damages.
17 Plaintiff is further entitled to cost and attorney fees pursuant to 17 U.S.C §
18 505.
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PRAYER FOR RELIEF
(CONSTRUCTIVE TRUST ACCOUNTING)

(“AT&T”) / AT&T Mobility hold those commercial profits and personal gains which have accrued to those as a result of infringement and other wrongful acts described herein as constructive trustees of those commercial profits and personal gains, for the benefit of Plaintiff. Plaintiff seek an accounting of said funds, and an order declaring that Defendants (“AT&T”) / AT&T Mobility hold said funds in trust for Plaintiff.

WHEREFORE, Plaintiff respectfully request judgment against (“AT&T”) / AT&T Mobility as follows:

1. For general damages in an amount to be proven at trial;
2. For punitive damages in an amount to be proven at trial sufficient to punish and deter Defendant from engaging in such activity in the future;
3. For the maximum statutory damages under 17 U.S.C. § 504(c), in the amount of 150,000 with respect to each timely registered work that was infringed.
4. For damages and disgorgement of lost profits, in the amount to be proven at trial;
5. For injunctive relief as against Defendants;
6. For an accounting;

1 7. For an order declaring that ("AT&T") / AT&T Mobility hold funds which
2 they have gained as a result of their wrongful acts as constructive
3 trustees for the benefit of Plaintiff;

4 8. For any applicable and appropriate pre-and post-judgment interest;

5
6 9. For any other relief that the Court deems just and proper.

7 DATED: October 6th, 2014
8
9

10 Respectfully submitted,
11

12 By: /s/ Blake Best
13 Pro Se/Plaintiff
14 5392 Northbend Road
15 Cincinnati, Ohio 45247
16 Email: blake@bcs24hrs.com
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DEMAND FOR JURY TRIAL

1 Plaintiff hereby demand a jury as to all issues properly so tried.

2
3 DATED: October 6th, 2014
4
5

6 Respectfully submitted,
7

8 By: /s/ Blake Best
9 Pro Se/Plaintiff
10 5392 Northbend Road
11 Cincinnati, Ohio 45247
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CERTIFICATE OF SERVICE

Plaintiff hereby certify on October 6th, 2014, I filed a copy of the foregoing instrument with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification to the following attorney(s) of record:

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Attorney for Defendants AT&T, Inc. and AT&T Mobility LLC

OF COUNSEL:

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4
5 DATED: October 6th, 2014

6
7
8 Respectfully submitted,

9
10 By: /s/ Blake Best

11 Pro Se/Plaintiff

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